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10 CHIEF JUDGE STANLEY A. BASTIAN

11 UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF WASHINGTON
13

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.
17

18 CODY ALLEN EASTERDAY,

19 Defendant.
20
21

No. 4:21-CR-06012-SAB-1

**DECLARATION OF CARL J.
ORES KOVICH IN SUPPORT OF
DEFENDANT'S MOTION TO
CONTINUE RESTITUTION
DETERMINATION**

22
23 I, Carl J. Oreskovich, do hereby declare the foregoing is true and correct
24 under penalty of perjury to the best of my knowledge:
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- 26 1. I am over the age of eighteen and competent to testify regarding the
27 matters stated herein.
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- 1 2. I am the attorney of record for the Defendant, Cody Easterday. I make
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3 this Declaration in Support of Defendant's Motion to Continue
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5 Restitution Determination.
- 6 3. As indicated fully in the accompanying Motion, the purpose of
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8 Defendant's Motion to Continue Restitution Determination is for
9
10 consideration of three outstanding restitution offset issues, along with
11
12 others as may be further established.
- 13 4. Recently in the Easterday Ranches, Inc. ("Easterday Ranches")
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15 Bankruptcy, Tyson Fresh Meats, Inc. ("Tyson") received a distribution
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17 of approximately \$62,417,952.00 and Segale received a distribution of
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19 approximately \$3,492,780.00. It is further my understanding that
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21 approximately \$8,750,000.00 to \$9,000,000.00 in additional payments
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23 to be made by various Easterday family members and entitles under the
24
25 Confirmed Bankruptcy Plan will be contributed to Tyson and/or Segale
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27 in the future once received by the Plan Administrator as they come due.
- 28 5. The first outstanding restitution issue relates to unpaid feed amounts due
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30 from Tyson to Easterday Ranches. These amounts were incurred both
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32 prior to the Bankruptcy and post-Bankruptcy. In essence, Easterday
Ranches provided feed and cattle care services for cattle owned by

1 Tyson. However, Tyson failed to pay Easterday Ranches approximately
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3 \$11,970,095.18 associated with these services.

4 a. This number is comprised of pre-petition feed and care costs of
5
6 approximately \$9,452,439.65 and post-petition feed and care
7
8 costs of approximately \$2,517,655.53.

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10 b. The pre-petition feed was not disputed as it was reported on
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12 Easterday Ranches' monthly operating reports as a receivable
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14 throughout the Bankruptcy proceedings and never objected to by
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16 any party, but was never paid by Tyson.

17 c. The post-petition feed was never recorded as a receivable by
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19 Easterday Ranches, but were accrued through February 15, 2021,
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21 prior to the settlement with Tyson. The details and reconciliation
22
23 for feed amounts owed prior to the settlement have never been
24
25 made available by Tyson.

26 6. Second, there is a significant issue with respect to money that Tyson
27
28 illegally collected from Easterday Ranches from approximately 2010
29
30 through November 2020 in violation of provisions of the Packers and
31
32 Stockyards Act of 1921.

- 1 a. Notably, Tyson has maintained that it owned the cattle that were
2 purchased and fed by Easterday Ranches. Attached hereto as
3 **Exhibit A** is the Confirmation of Ownership Agreement.
4 Attached hereto as **Exhibit B** is the Cattle Feeding Agreement
5 between Tyson and Easterday.
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10 b. Tyson treated the agreements as if Easterday had owned the cattle
11 and collected over \$51,000,000.00 in interest and guaranteed
12 profits during this time frame, when in fact Tyson was not
13 entitled to said funds. If Tyson owned the cattle as is represented
14 by the two above-referenced Agreements, Tyson was not entitled
15 to interest and guaranteed profits.
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20 c. Federal Regulations implemented under the Packers and
21 Stockyards Act of 1921 indicate: “No packer or dealer [*i.e.*,
22 Tyson] shall, in connection with the purchase of livestock in
23 commerce, charge, demand, or collect from the seller of the
24 livestock [*i.e.*, Easterday Ranches] any compensation in the form
25 of commission, yardage, or other service charge unless the charge
26 is for services mandated by law or statute and is not inconsistent
27 with the provisions of the Act.” 9 C.F.R. § 201.98.
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d. The following table provides a summary of prohibited compensation amounts collected by Tyson from Easterday Ranches, as reported in Tyson's own settlement sheets:

PROHIBITED SERVICE CHARGES COLLECTED BY TYSON			
Year	Interest	Guaranteed Profit	Total Service Charges
2010	393	337	729
2011	1,609	1,151	2,760
2012	2,090	1,215	3,306
2013	2,323	1,268	3,592
2014	2,284	1,185	3,469
2015	4,067	1,492	5,559
2016	3,584	1,355	4,939
2017	3,454	1,350	4,804
2018	4,984	1,443	6,426
2019	8,877	-	8,877
2020	6,573	-	6,573
	40,238	10,797	51,034

7. Third and finally, Tyson owes Mr. Easterday compensation for the use of his name and likeness in marketing ventures.

a. In this vein, Tyson marketed beef to Nipponham Group (now NH Foods Group) under the label "Cody's Beef" for at least seven years, and up to eleven years, without sharing in the profits or paying Mr. Easterday for the use of his name and likeness. Attached hereto as **Exhibit C** is Tyson's marketing material

utilizing Mr. Easterday's name and likeness, along with the associated trademark.

b. Specifically, "Cody's Beef" was a branded beef program and had certain contract specifications and requirements. The contract specifications for Cody's Beef required delivery of high-quality cattle that would have met or exceeded the requirements for Tyson's Chairman Reserve branded beef products.

c. The agreement between Mr. Easterday and Tyson was that if the marketing venture was profitable, Tyson would share profit with Mr. Easterday. As the brand and label were used by Tyson for at least seven years and Tyson has retained and maintained the trademark, it obviously had substantial value to Tyson.

d. Mr. Easterday and/or Easterday Ranches have never been provided with any reconciliation of the monies that were received, the profits that Tyson records, or any amount due to Mr. Easterday. Rather, Tyson has solely retained all profits arising out of this marketing arrangement.

e. The amount of benefit wrongfully retained by Tyson is estimated as upwards of \$100,000,000.00. This number is based upon

1 Tyson receiving approximately 45,000 to 50,000 head of cattle
2
3 per year under the program and the estimated premium value per
4
5 head using United States Department of Agriculture (“USDA”)
6
7 data as a proxy.

8 8. The defense’s position is that the Court should consider the three above-
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10 identified issues, along with others as may be further established, as
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12 potential offset(s) against the remaining amount of restitution in this
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14 case owed by Mr. Easterday. As such, Mr. Easterday is requesting a
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16 continuance of the restitution portion of the sentencing hearing so the
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18 parties may evaluate these potential offsets, potentially obtain
19
20 associated discovery, and provide the Court detailed legal analysis and
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22 briefing regarding the potential restitution offsets.

23 9. On September 19, 2022, I sent a letter to Brian M. Donovan and John
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25 (Fritz) Scanlon, attorneys for the Government, outlining these restitution
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27 issues and inquiring about the Government’s position regarding a
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29 continuance of the restitution portion of the upcoming sentencing
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31 hearing. Attached hereto as **Exhibit D** is a true and correct copy of this
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correspondence.

1 10.Mr. Donovan, on behalf of the Government, responded that “we will

2 dutifully apply any future credits or offsets as directed by the Court.”

3 Further, Mr. Donovan indicated the Government would only object to a

4 continuance “to the extent it delays Cody’s reporting to BOP custody.

5 Otherwise, we take no position on whether an additional hearing is

6 necessary/warranted.” Attached hereto as **Exhibit E** is a true and

7 correct copy of this email correspondence.

8 11.This Motion is made in good faith and not for the purpose of hindering

9 or delaying this matter.

10 I declare the foregoing is true and correct under penalty of perjury of the
11 laws of the State of Washington and the United States.

12 EXECUTED this 26th day of September, 2022 in Spokane, WA.

13 By: /s/ Carl J. Oreskovich

14 Carl J. Oreskovich

1 **CERTIFICATE OF SERVICE**

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3 I hereby certify that on the 26th day of September, 2022, I electronically

4 filed the foregoing document with the Clerk of the Court using the CM/ECF

5 System, which will send notification of such filing to all of the attorneys that

6 have appeared in this case and have registered with the CM/ECF System.

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9 EXECUTED this 26th day of September, 2022 in Spokane, WA.

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13 By: /s/ Carl J. Oreskovich

14 Carl J. Oreskovich

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